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In the Supreme Court of the United States

OCTOBER TERM, 1963

ALI YASSEM, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 1069

ALI FATEMI, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit is not yet reported. The opinion of the District of Columbia Court of Appeals is reported at 192 A. 2d 525.

JURISDICTION

The judgments of the United States Court of Appeals were entered on March 24, 1964. On April 11, 1964, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including May 22, 1964. The petition for a writ of certiorari was filed on May 5, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

733-112—64

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to sustain convictions for refusal "to quit" property on demand of the person in charge.

2. Whether the United States Court of Appeals properly limited petitioners' appeal from the District of Columbia Court of Appeals.

STATUTE INVOLVED

Title 22, D.C. Code, § 3102, provides in pertinent part:

> *Unlawful entry on property.*
>
> Any person who, without lawful authority, shall enter, or attempt to enter, any public or private dwelling, building or other property, or part of such dwelling, building or other property, against the will of the lawful occupant or of the person lawfully in charge thereof, or being therein or thereon, without lawful authority to remain therein or thereon shall refuse to quit the same on the demand of the lawful occupant, or of the person lawfully in charge thereof, shall be deemed guilty of a misdemeanor * * *.

STATEMENT

By information returned in the District of Columbia Court of General Sessions the 14 petitioners were charged with refusing on January 22, 1963, to quit the Iranian Embassy on demand of the Iranian Minister, in violation of 22 D.C. Code 3102. Petitioners were found guilty in a trial before the court. Each petitioner was sentenced to pay a fine of $50 or serve 30 days in jail, with execution of the sentences to be

suspended upon the filing of petitioners' personal bonds not to repeat the offenses. The District of Columbia Court of Appeals and the United States Court of Appeals for the District of Columbia Circuit affirmed the convictions.

The facts of the case may be briefly summarized:

On January 21, 1963, petitioners lawfully entered the premises of the Iranian Embassy. At about noon of the following day, the Metropolitan Police Department of the District of Columbia was called by embassy officials, and police officers were sent to the embassy. When they arrived, the officers were given a letter signed by the Iranian Minister requesting the police "to enter the Iranian Embassy and to eject from the premises and arrest" petitioners (G. Ex. 1). At about 12:25 p.m. the Minister, in the presence of the officers, requested petitioners to leave the premises, admonishing them that they had five minutes within which to do so. Petitioners refused to comply with this demand. They were thereupon arrested and transported from the embassy by police truck (R. 143–145).

Later that afternoon petitioners' case came up for trial in the Court of General Sessions. Petitioners were represented by counsel (the same attorney rep-

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Stenographic transcripts are not kept of proceedings in the Court of General Sessions except on specific request. The "Statement of Proceedings and Evidence" prepared by the trial judge and approved by all counsel appears at pages 142–146 of the Record in this Court and is reprinted at pages 2–6 of the government's brief in the Court of Appeals for the District of Columbia Circuit.

Petitioners' purpose, according to affidavits filed in support of their motion for a new trial, was to submit a petition to the Ambassador protesting an allegedly fraudulent referendum held in Iran.

resenting them in this Court), who was asked by the court whether he desired a continuance. Counsel replied in the negative, stating that his clients did not have sufficient funds to post bond and would, therefore, prefer to be tried immediately. The government's witnesses were the Third Secretary in the Iranian Embassy and the captain of the Metropolitan Police Department who had responded to the Minister's request (R. 142–144).

Petitioners chose not to testify or offer evidence.[1] After their convictions petitioners filed a motion for a new trial. Petitioners Dehghan and Mohamadi claimed that they were at the embassy to renew their passports and that they had not associated with the protesting group. The others asserted that they had been told by the ambassador that they could remain at the embassy indefinitely, and that they had insufficient time to prepare a defense. The trial court denied the motion (R. 145–146). On appeal, the District of Columbia Court of Appeals affirmed, 192 A. 2d 525. Petitioners then sought an appeal to the United States Court of Appeals for the District of Columbia Circuit. The United States Court of Appeals limited its review to "the questions whether the trial court erred in refusing to grant a new trial, and whether the procedures followed at the trial violated the substantial rights" of petitioners. In a

[1] The representative of the Iranian Embassy acted as interpreter and informed petitioners of their rights in Iranian. With regard to their right to testify or to refuse to testify, further explanation was given to one petitioner by petitioner Faigan (R. 144).

per curiam opinion, the United States Court of Appeals affirmed.

ARGUMENT

1. The evidence was sufficient to sustain the convictions. The proof showed that petitioners chose to remain in the Iranian Embassy after its Minister demanded they leave. The statute, on its face plainly proscribes conduct of this sort and gives notice that remaining after a request to leave constitutes a violation. Compare the statutes discussed in our Brief as Amicus Curiae in *Griffin* v. *Maryland*, No. 6, this Term, pp. 40–42. And the fact that petitioners may have been seeking to present some grievance to their ambassador gave them no more right under the First Amendment to remain on private premises after they were asked to leave than if they were there for any other lawful purpose. Nor is there any merit to petitioners' argument that their presence in the Iranian Embassy rendered them immune from prosecution. Immunity exists under these circumstances "only in so far as it is necessary for the independence and inviolability of envoys, and the inviolability of their official documents and archives." 1 Oppenheim, *International Law* (8th ed., 1955), p. 796. When, as in the present case, the embassy seeks the aid of local law officials, the doctrine which recognizes the extraterritoriality of diplomatic envoys is totally inapplicable.

2. The District of Columbia Court of Appeals considered petitioners' claims and rejected them in a well reasoned opinion. The action of the United States Court of Appeals in limiting its review to

the fairness of the trial procedure and the grounds asserted in support of the motion for a new trial was fully justified in light of this earlier extensive consideration of petitioners' other contentions. Title 11, Section 773 (now Section 321) of the D.C. Code renders appeals from the District of Columbia Court of Appeals to the United States Court of Appeals discretionary by requiring each prospective appellant to file a "petition for an allowance of an appeal." The United States Court of Appeals then determines from the petition, as this Court does on petitions for certiorari, whether further review is warranted. Limited review was appropriate under the circumstances of this case.

3. Since two appellate courts have already considered the issues relating to the fairness of the trial and the grounds asserted in support of a new trial—including petitioners Dehghan and Mohamadi's claims that they were merely innocent bystanders—these matters do not warrant further review. Moreover, petitioners were explicitly asked whether they wished a continuance, and they replied that they did not (R. 142). All of them, including Dehghan and Mohamadi, were advised that they could present evidence and could testify, but none chose to do so (R. 144). Their present contention that the bail set by the trial court was excessive and violated the Eighth Amendment was never presented before—not even in the form of a motion to reduce bail. Hence it cannot serve as a justification for petitioners' failure to request a continuance.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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